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April 11, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 92-77

Dear Mr. Caton:

Enclosed for filing are the original and nine (9) copies of the Comments of U.S. Osiris Corporation in CC Docket No. 92-77 regarding the Commission's Second Further Notice of Proposed Rulemaking, released June 6, 1996.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Quetions regarding this filing may be directed to me at (407) 740-8575.

Monique Byrnes

Monique Byrnes
Consultant to U.S. Osiris Corporation

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cc: George Lebus, USOC
FCC Contractor, ITS
Enforcement Division, Common Carrier Bureau
Adrien Auger, Common Carrier Bureau - Diskette
file: USOC-FCC

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for	)	
InterLATA 0+ Calls	)	CC Docket 92-77

COMMENTS OF
U.S. OSIRIS CORPORATION

ON THE COMMISSION'S SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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Dated: July 16, 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Billed Party Preference for	)	
InterLATA 0+ Calls	)	CC Docket 92-77

COMMENTS OF

U.S. OSIRIS CORPORATION

ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

U.S. Osiris Corporation ("USOC") is a privately held Texas-based company providing operator assisted telecommunications services, primarily to the hospitality industry. The Company respectfully submits the following comments on the Commission's Second Further Notice of Proposed Rulemaking ("Notice") in the captioned proceeding, released June 6, 1996.

INTRODUCTION

USOC applauds the Commission's decision to put aside Billed Party Preference (BPP) given the costly nature of implementation. Unfortunately the Commission continues to be swayed to believe there is an ongoing problem regarding the rates charged for operator assisted calls and that therefore more stringent consumer protection measures must be put in place.

The Commission has requested comments on its tentative conclusion to "(1) establish benchmarks for OSPs' consumer rates and associated charges that reflect what consumers expect to pay, and (2) require OSPs that charge and/or allow related premises-owner fees whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest interstate interexchange carriers to disclose the applicable charges for the call to consumers orally before connecting a call."[1] The alternative proposal is for audible rate disclosure on all 0+ calls.

SUMMARY

USOC does not support the assumption that greater consumer protective measures must be put in place for operator assisted calls from aggregator locations. The volume of consumer complaints is minuscule when weighed against the total number of operator assisted calls during the same time period. This statistic, when coupled with increasing dial-around percentages (now estimated to average above 60% from all aggregator locations) negates the attention and resources being devoted to quelling any operator services issues.

The Commission is choosing a homogeneous solution for issues which should be handled on an individual case basis. Therefore, USOC

[1]CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, Released June 6, 1996. Page 4.

proposes that all OSPs no longer file informational tariffs with a range of rates, but instead file tariffs with exact rates and rate plans. These tariffs can be used to understand industry actuals and resolve consumer complaints.

USOC believes that benchmark rates are not required, but if set should not be based on the rates and therefore the whims of another carrier. Especially a carrier with a cost structure and resources unparalleled in the industry.

Furthermore USOC believes that the determination of who must provide oral rate disclosure should not be dependent upon whether or not a company rates calls at or below the benchmark. If oral rate disclosure is adopted it should apply equally to all carriers.

These comments explain the differences between the hospitality and payphone industries in terms of how rates are determined and in consumer expectations. Such differences are significant enough to warrant separate treatment. In addition, payphones have been guaranteed some level of per call compensation for lost revenue due to recognized high rates of dial-around usage. Guest phones in hotels and motels also experience very high rates of dial-around, and in this proceeding are considered akin to payphones. Guest phones should be considered in the eligibility pool for payphone compensation or any implementation of benchmark rates and rate disclosure requirements should apply only to payphones.

USOC has developed preliminary costs for oral rate disclosure as well as estimates regarding the additional call set-up time which will result. More significant than the reduction in network efficiency and the rise in consumer impatience when such calls are handled in this manner will be the change in consumer perception of OSPs. The Commission must require oral rate disclosure on <u>all</u> calls regardless of whether benchmark rates are set. Failure to do so will result in a government-sanctioned class distinction between operator service providers. This would be prejudicial given the Commission's belief and understanding that the cost structures, make up and natures of operator service providers is different enough to warrant different rates.

Lastly, the Commission requested comments on the methodology which should be adopted for benchmark rates and proposed an average of the three largest carrier rates citing consumer expectations as rationale. The comments demonstrate that consumer expectations are so varied as to make such benchmark rates difficult to ascertain. Additionally, basing benchmark rates on the rates and therefore whims of another carrier places the destiny of all operator service provider in a precarious position. Lastly, if the benchmark rates are set on an average of rates from AT&T, MCI and Sprint than these companies should be declared dominant at least with respect to the operator assisted services market.

I. MARKET FORCES OBVIATE THE NEED FOR ADDITIONAL CONSUMER PROTECTION MEASURES.

The operator services industry has changed significantly since the original discussions on BPP, and the changes have come from many sources. The number of consolidations and mergers has increased, thereby shrinking the number of providers. Regulations have significantly modified company and consumer behaviors. Competition has increased substantially and consumers have become better educated and more aware of technological changes as a whole, and aware of changes in the telecommunications industry in particular.

Access code dialing has become widespread. Changes in consumer dialing patterns has caused OSPs to provide 10XXX dialing information in promotional packages. With the majority of consumers educated and making conscious choices regarding call transport there not only is no need to implement BPP, there also is no need to enact more regulation, under the guise of consumer protectionism, across the entire operator services industry.

Analysis of the OSP complaints, both interstate and intrastate, demonstrate that there is no consumer expectation when it comes to rates. It would not be surprising if such an analysis found that the majority were filed are against the three largest carriers - the very companies which are being held up as meeting consumer expectations and therefore candidates for benchmark ideals.

This is a complex industry with a variety of players. Company structures and costs vary widely. Some companies only offer operator assisted services while others view OSP services as one set among many telecommunications services offered. A "one size fits all" solution will only be superficial. The Commission will be able to say it has met a consumer need but it will not have addressed root causes and specific solutions. Those can only be addressed as each individual case arises.

Market forces have had a significant impact on the structure and direction of the OSP industry. The companies who have charged high rates or promised large commissions in the past have been driven out of business by competitive forces. Certainly exceptions exist, and those companies or company-specific rate plans should be handled on an individual case basis.

The Telecommunications Act of 1996 that will alter the very structure of the telecommunications industry. Market power may shift and we may see an even greater increase in merger and acquisition activity. These forces should be allowed to play out.

The Telecommunications Act is focused on competition, innovation and the removal of market barriers. The intent is less regulation, not more. The intent is to allow the market to work. It is not the role of government to insure that each consumer pays the same rate for similar services.

All indications point to a continuation of the trend of more informed consumers and many more options for dialing around presubscribed carriers. Today's statistics demonstrate dial-around activity at approximately 60% or higher. This figure is expected to rise with the advent of greater consumer education and the growth and consumer acceptance of telecommunications options, such as debit cards.

The need for rate benchmarks is significantly less today than it was a few years ago. The Commission should not implement either benchmark rates or oral notification of rates under any of the scenarios described in the Notice.

Neither benchmark nor oral notification of rates are supported by any evidence. Instead, USOC recommends the FCC require OSPs to file exact rates and rate plans in interstate tariffs. The Company agrees with the Commission that informational tariffs containing a range of rates are of no value to the consumer. Those tariffs also provide no value when working to ascertain the variety of rate plans and ranges actually being charged. Exact rate filings will assist in the resolution of complaints and put downward competitive pressure on the rates of all carriers.

II. APPLICABILITY

THE COMMISSION SHOULD SPECIFY APPLICABILITY TO PAYPHONES ONLY, EXCLUDING OTHER AGGREGATOR LOCATIONS DUE TO THE UNIQUE NATURE OF PAYPHONE CALLS. IN THE ALTERNATIVE, HOTELS/MOTELS SHOULD BE INCLUDED IN POOL OF TELEPHONES ELIGIBLE FOR PAYPHONE COMPENSATION.

The Commission's Notice clearly states that the proceeding is concerned with the "narrower issues related to the provision of operator services from payphones"[2] and seeks comments "on the cost of requiring all OSPs to disclose their rates for each 0+ call from a public payphone"[3]. The market being addressed seems perfectly clear. However, there are indications throughout the Notice that the Commission would extend the impact of any decision to all operator assisted InterLATA calls.

The Commission recognizes that there are distinct differences in the transactional nature of 0+ calls placed from payphones and those placed with a carrier with whom the consumer has a presubscribed relationship. The Commission should also distinguish between those transient calls placed from payphones and those placed from other aggregator locations through the use of telephones that are not payphones, such as those located in hotel guest rooms.

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[2] CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, Released June 6, 1996. Page 3.

[3] CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, Released June 6, 1996. Page 4.

From a consumer perspective there is a difference between placing a call from a street corner or airport payphone versus placing a call from the comfort of a hotel room. From an industry perspective, hotels and motels are required to follow not only the regulations set forth by utility commissions but also those set forth by government agencies regulating business practices. Hotel disclosure rules are set by both agencies in most states. Furthermore, there is more space available and more time to read the information posted in a hotel room than on a payphone. Lastly, consumers often talk with a hotel employee (front desk or operator) to clarify telephone use and surcharge issues. Consumers at hotels are in a more relaxed environment, and there is greater opportunity for a consumer to take the time to dial around or determine whether the OSP should handle their telecommunications needs.

The industry also recognizes the differences between operator services to the hospitality market and the payphone market. It is delusional to assume that OSPs set rates independent of the properties served. To the contrary, OSPs work jointly with property owners to determine the best mix of rates balancing the property owners assumptions on its customers' willingness to pay and the commissions the property owner wishes to receive, with the OSPs knowledge of rates for other properties.

Over the last three years, downward pressure has been brought to bear on hospitality rates. This pressure has come from property owners whose guests have complained about telephone charges and subsequently have increased their dial-around usage. The increase in dial-around has hurt the property owner who receives neither payphone compensation nor commission. Consumer complaints speak for themselves. USOC rates to the hospitality industry are lower today on average than they were three years ago.

The payphone industry has not reacted to dial-around in the same manner. Commissions to payphone owners is the highest cost component for an operator service provider to payphones. Instead of downward pressure on rates, escalating commission levels have resulted in higher consumer rates.

A rate cap proposal which treats all operator service providers, and as a result all operator service provider customers, alike does the industry and its constituents a grave injustice. For the reasons stated above, should the Commission implement benchmark rates and/or oral notification, such benchmark rates should apply only to payphones.

Per Call Compensation

In the case that benchmark rates or audible notice requirements are ordered, the Commission must take additional steps to protect the hospitality industry and those serving it. The Commission must include all hotel/motel telephones in the eligibility pool for payphone compensation. It would be prejudicial to treat hotel/motel phones the same as payphones when it comes to rate setting and audible customer notice, but not treat them as payphones for compensation purposes.

A hotel/motel guest room telephone has an extremely high incidence of consumer dial around call traffic. Based on statistics derived from hotels served by USOC, 10XXX and 800 access dial around comprises an average of 67% of all hotel/motel guest room calls since 1994. For the same reasons that this country has legislated payphone compensation, hotels and motels should be compensated for use of their equipment that does not generate revenue.

II. IMPLEMENTATION OF ORAL DISCLOSURE

EMBEDDED BASE EQUIPMENT IS NOT CAPABLE OF HANDLING AUDIBLE NOTICE TO CONSUMERS FOR REAL TIME RATING. THE COMMISSION DOES NOT HAVE SUFFICIENT DATA TO DETERMINE THE COST IMPACT OF ORAL DISCLOSURE RULES.

USOC offers operator assisted services over resold facilities primarily to the hospitality (hotel/motel) industry. USOC provides operator assisted telecommunications services to approximately 1000 properties, including several hundred large hotel properties which utilize store and forward technology for call processing.

USOC provides its customers with micro-processor based equipment that handles both routing and screening of operator assisted calls to USOC, and routes direct dialed calls or direct billed calls (through a proprietary calling card) to another carrier of choice.

Billing information is collected, stored and formatted by USOC and submitted to a third party clearinghouse for billing. Calls may be billed to a calling card, commercial credit card, the called number (collect) or a third party telephone number. Billing and collection of telephone calls is typically performed through local exchange companies. USOC's name is on the end user bill when the local exchange company has the capability for sub-carrier identification. USOC operations are typical of the industry.

Disclosure of Price on All Operator Service Calls

The Company's embedded base equipment at hotel locations is not capable of providing rates on a real-time basis. Customers are provided with the capability to speak with an operator who can provide that information. In order to implement real-time rate quotes on all calls, site equipment would have to be replaced or calls would need to be routed to an operator center where a database could be used to retrieve the rating information.

The Staff of the Colorado Commission speaks very boldly in stating that "most if not all, (OSPs) have the capability of accessing a data base that provides specific rates for the specific call in question." Companies have not been given the time to evaluate empirically what that would require in terms of additional equipment; what the impact of re-routing calls would do to call set-up time; who could provide the service and at what cost; and how the additional cost of real-time rate information would impact end user costs.

Call set-up time will be impacted seriously. Although no empirical data is yet available, USOC estimates an additional thirty (30) seconds will be required for rate disclosure. Each call will need to go through a two step process prior to routing. First, the jurisdiction of each call will need to be determined. Second, those calls determined to be interstate will need to be routed to a rating database. The least expensive way to handle rate disclosure is for all interstate calls to be routed to a central source, then sent back to the originating location so the originating location can be recorded. Then each call could be processed to its terminating end. The other method would require all call be routed and switched from the central database location and that location would track the origination of the call for billing purposes.

In addition to the call processing time, calls requiring rate disclosure will also be more expensive to process. USOC estimates additional costs of approximately $.40-$.60 for each call attempt. These charges include 800/888 termination to an operator center or centralized database, switching and transmission but does not include any hardware changes which may be required for call routing to the originating location. The true cost will depend upon the number or percentage of completed calls - which will dramatically decrease given the Commission's proposals. If USOC assumes a modest increase of 25% in incomplete calls the resulting rate increase becomes $1.20 - $1.50 per completed call.

The industry has spent years and significant dollars developing an infrastructure which is fast and efficient. One of the reasons price competition is so fierce in this industry is because consumers have become accustomed to quick network call set-up and quality. USOC believes that the majority of consumers of long distance service will not require rate disclosure information.

Having the information provided prior to call completion will be irritating to many consumers and new complaints requesting methods to bypass the notice will flourish.

The Commission should not rush into implementing any measure without the appropriate information. There is insufficient evidence to determine the cost impact of oral disclosure rules.

None-the-less, should the Commission pursue rate disclosure, the requirement should be pressed upon all providers - regardless of whether or not a benchmark is set or whether that benchmark rate is adhered to. If audible rate disclosure does not apply to all carriers equally a class system of carriers will be forged more deeply.

As an alternative to oral rate disclosure, the Commission is also considering a notice informing consumers that the rates charged may exceed government sanctioned benchmarks. Regardless of how such a notice would be worded the effect will be the same as mentioned above. OSPs would be divided into two categories - the "good" guys and the "bad" guys. As these would be benchmarks and not required rate caps it would not be inappropriate for some carriers to charge above the benchmark rates. Carrier costs are not the same and higher rates may be justifiable. Yet the damage, government sanctioned, would already be done.

III. DETERMINATION AND ENFORCEMENT OF BENCHMARK RATES

SHOULD BENCHMARKS BE ORDERED BY THE COMMISSION THE RATES SHOULD NOT BE BASED ON THE AVERAGE PRICE CHARGED BY AT&T, MCI AND SPRINT. SHOULD THOSE CARRIERS BE USED AS THE BENCHMARK, THE CARRIERS SHOULD BE DESIGNATED AS DOMINANT CARRIERS IN SO FAR AS OPERATOR SERVICES IS CONCERNED. ADDITIONALLY, THE COMMISSION DOES NOT POSSESS THE RESOURCES TO MONITOR AND ENFORCE THE USE OF BENCHMARK RATES.

The basis of the proposed benchmark rates is an average of the rates charged by the three largest carriers as of January 1 of each year plus some margin percentage. The Commission suggests that to avoid having OSPs monitor and match "every rate cut" made by any of the three largest OSPs, the benchmark rates should be set at an average of AT&T, MCI and Sprint rates as of January 1st of each year. The assumption is that the largest carriers have and will continue to have rate cuts: "This would allow an OSP to set its rates at or below the benchmark at the beginning of a year and leave them unchanged despite any subsequent rate cuts by the three largest OSPs".

Just the contrary is proven true. AT&T has continuously raised its per minute mileage-based usage rates for both its initial and additional minutes since 1993. In addition the per call surcharges for a variety of call classifications has risen. From 1994 to 1996 the initial minute increased 10-12 cents and each additional minute increased 5 cents.

Furthermore, the differences between AT&T, MCI and Sprint rates are indistinguishable. This may be considered price collusion but it is more likely that MCI and Sprint view AT&T as a dominant carrier and given their vast corporate structure can mirror AT&T rates without any difficulties. AT&T then is setting the market rate - clearly a dominant carrier in the operator services market.

In the last few years MCI and Sprint have created fully-owned subsidiaries which resell only their services. ASC Telecom, Inc. a Sprint subsidiary has filed multiple operator services rate plans.[4] The first plan mirrors the mileage-sensitive time-of-day rates of its parent company. However, subsequent rate plans have significantly higher rates. Some of the rate plans group the country into bands and rate calls based on the state of origination, and divides the country into two mileage bands.

Although ASC Telecom, Inc. is only one company it indicates that Sprint has determined there are market opportunities for companies willing to offer services at higher than the largest three carriers.

If we assume AT&T reverses the trend and cuts rates, nothing will stop AT&T from cutting them so low as to cause OSPs to withdraw from the market. The Commission has already acknowledged the varying cost structures between carriers. AT&T is not under any obligation to justify its rates or demonstrate that rates are above

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[4]ASC TELECOM, INC. Informational Tariff, Effective Date: January 1, 1995.

costs. AT&T is no longer considered a dominant carrier. Under this plan, the profitability of any company may depend upon the pricing decisions of AT&T.

Capital investments to OSPs will completely disappear. This is not speculation. No investor will supply capital to a company which cannot control its own destiny. Long term planning will become impossible. The industry will disappear as companies close their doors or our purchased.

The Commission finds that the "record supports the conclusion that we should establish benchmarks, based on the reasonable expectations of consumers, for OSP interstate rates and associated charges that consumers must pay for operator services."[5] The plethora of rate plans and consumer options has blurred consumer vision such that consumer expectations can no longer be measured.

Consumer expectations depend not just on the carrier selected, but also on the optional calling plan selected. Everyone who is presubscribed to AT&T for example, is not on the same rate plan and will have different rate expectations. Furthermore, AT&T's rates for residential service are different than those for operator assisted calls. There no longer is a set of expectations from which we can develop benchmarks. Polling consumers at random regarding the cost of a call from one location to another may reveal a wide

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[5]CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, Released June 6, 1996. Page 14.

range of rate possibilities. Competition has brought choice and choice has led to consumer expectations that are not homogeneous.

The apparent complaint level of consumers against operator service providers fall into several categories. Many consumers complain of high rates even when the rate charged is equal to that of AT&T. This common phenomena has many explanations, but it all boils down to consumer expectations.

Some consumers are conditioned to believe that rates of companies other than AT&T are unreasonably high. Alot of consumer complaints center around the fact that the consumer did not get the carrier he or she expected. Utilizing the three major carriers to form benchmark rates will only reinforce to consumers that all other carrier rates are unjust.

Even if the Commission could justify additional consumer protection measures through benchmark rates, the rates will be controversial regardless of the rationale or methodology used to develop them. AT&T alone has so many rate options for operator assisted calls that just tracking the options would be burdensome.

There are some states which progressively have recognized the differences between carriers and are moving toward less regulation and greater flexibility. Michigan has capped OSP rates at 300% above AT&T. Nevada has set rates at approximately 150% above AT&T.

Kansas has recently legislated the abolition of all rate caps. The increased flexibility at the state level indicates that the 15% proposed by the FCC is not just and reasonable.

The CompTel benchmark rates run contrary to the rate structure common in this industry. Consumers would find it more complex and illogical than the existing variety of plans they must deal with today. There is no per minute charge to the CompTel's proposal. The varying per-minute usage charge, depending on the length of the call, flies in the face of the industry's prevailing fixed plus usage-based variable cost structure.

Any benchmark will require continuous evaluation of the methodology in light of future changes in technology and economic factors. Furthermore, without adequate enforcement mechanisms, either through billing and collection systems and controls or other means of policing actual charges, the public will resent the lack of bite behind the rate benchmark efforts. Essentially the FCC will resort to resolving complaints individually with specific companies. Consumers will be lulled into a false sense of supposed security for little benefit. OSPs will be required to revamp existing equipment and re-route traffic to meet a politically correct but impractical policy.

U.S. Osiris Corporation respectfully submits these comments on Billed Party Preference, Second Further Notice of Proposed Rulemaking.

July 16, 1996

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